

SZABO  
Serial No. 09/883,369

Atty Dkt: 2466-97  
Art Unit: 2662

### **REMARKS/ARGUMENTS**

Reexamination of the captioned application is respectfully requested.

#### **A. SUMMARY OF THIS AMENDMENT**

By the current amendment, Applicants basically:

1. Editorially amend the specification.
2. Editorially amend claims all claims except claims 2 and 9.
3. Respectfully traverse the rejection under 35 USC §101 (see section C *infra*).
4. Respectfully traverse all prior art rejections (see section D *infra*).
5. Advise the Examiner of the simultaneous filing of a Petition to Extend.

#### **B. THE CLAIMS ARE DEFINITE**

The rejection of claims 4, 11, and 18 under 35 USC §112, second paragraph, has been mooted by amendment. For support of the amendatory language, see, e.g., the last paragraph of page 8 of the specification. The amendatory term "packet interarrival jitter" is defined in the specification and understood by the person skilled in the art with reference, e.g., to RTCP (see, e.g., the last paragraph of page 5 of the specification).

#### **C. CLAIMS 15 – 21 ARE STATUTORY**

Claims 15-21 stand rejected under 35 USC 101 as allegedly being directed to non-statutory subject matter (see enumerated paragraph 5 of the Office Action). The office action cryptically alleges that the computer program is not directed to a process, machine, manufacture or composition of matter, and cites MPEP §2106. Yet the office action reflects no proper consideration of MPEP §2106 or prevailing case law.

Independent claim 15 recites a computer program which, when run on a computer, executes specific steps. The steps are concretely tied to the real world of telephonic

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traffic control. The first step involves determining if an incoming call is to be accepted based on at least one current performance indicator value provided by a monitoring mechanism for monitoring the performance quality of ongoing calls. The second step involves outputting a signal indicating the result of the determining step. As such, Applicants independent claim 15 clearly has a "useful, concrete, and tangible result". See, e.g., MPEP §2106, Guideline A, and the long distance telephone billing process example cited therein.

Applicant requests that the Examiner carefully reconsider this rejection and, if necessary, consult with colleagues or supervisor before putting Applicants to any more effort in defending an incorrect and out-dated rejection. If the Examiner were to persist in this rejection, Applicants respectfully request a detailed analysis in conformance with MPEP §2106 which explains clearly the alleged deficiencies of the claims.

#### D. PATENTABILITY OF THE CLAIMS

Claims 1-4, 8-11 and 15-18 stand rejected under 35 USC 102(e) as being anticipated by U.S. Patent 6,529,475 to Wan. Claims 5-7, 12-14 and 19-21 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent 6,529,475 to Wan in view of U.S. Patent 6,678,250 to Grabelsky. All prior art rejections are respectfully traversed for at least the following reasons.

Wan presents a centralized solution (col. 8), where monitors 110 in the network (nodes) are snooping the RTCP protocol and sending the information received from the RTCP protocols to a central server 112. The central server 112 utilizes the information to determine the congestion status of the network. If the network is found to be congested, the server 112 sends a signal to the network's gatekeepers 100 to react on the congestion and arrange for reducing the traffic. Wan's central server 112 can be remotely located as shown in Fig. 1, or the gateways can serve as the central server (col. 7, line 65+).

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By contrast, Applicant's independent claims as amended require monitoring of at least one current performance indicator at the IP telephony gateway, and making a determination of acceptance or rejection at the IP telephony gateway. The amendatory language is supported throughout the original specification, where it is explained that the the RTCP contents is located in the media gateways 109, 111 that are involved in the communication between the end nodes. *See*, for example, the description of Fig. 2 and the third paragraph on page 9.

Thus, by monitoring the quality of ongoing calls, the IP telephony gateways can determine whether to accept a new Incoming call or not. Whereas Wan merely indicates that the gatekeepers "react to reduce congestion", Applicant's accept or reject individual incoming calls.

In Applicant's solution, the gateway both monitors and makes an analysis of the status of the network when an incoming call is received.

Claim 2 clarifies that the performance (indicator) value is provided by an RTCP mechanism. In Wan, RTCP is used and the RTCP packets are analyzed to get statistical value of the congestion status.

Claim 3 indicates that the particular information used by the gateway is a performance indicator value indicating the number of lost packets and/or the difference between packet spacing at the receiver and the sender (i.e. closely related to jitter). not as in Wan an order to reduce the traffic.

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**E. MISCELLANEOUS**

In view of the foregoing and other considerations, all claims are deemed in condition for allowance. A formal indication of allowability is earnestly solicited.

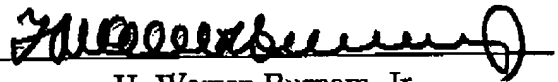
The Commissioner is authorized to charge the undersigned's deposit account #14-1140 in whatever amount is necessary for entry of these papers and the continued pendency of the captioned application.

Should the Examiner feel that an interview with the undersigned would facilitate allowance of this application, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By:



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